

Board of Equalization Rules for Tax Appeals

California Code of Regulations

Title 18. Public Revenues

~~Division 2~~Division 2.1. State Board of Equalization – Rules for Tax Appeals

ARTICLE ~~9~~CHAPTER 6. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

~~50905600.~~ DEFINITIONS. BOARD HEARING PROCEDURES: TAXES AFFECTED BY THIS ARTICLE.

a) The definitions of ~~Article 7, Regulation 5070~~ shall in sections 5511 and 5512 apply to this ~~Articlechapter~~, and Board hearings on claims filed under this ~~Articlechapter~~ shallwill be conducted pursuant to under the hearing procedures set forth in ~~Article 7chapter 5 of this division~~, commencing with ~~Regulation 5070~~section 5510, except as otherwise noted.

b) This ~~Articlechapter~~ applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax --

Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes --

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge

Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax

California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax

(including State-administered local sales, transactions and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law

Revenue and Taxation Code Sections 8601-9355

(c) To the extent that ~~regulations~~ provisions in this ~~Article~~ chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

~~50915601.~~ ELIGIBLE CLAIMS.

Only those expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board ~~shall~~ will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. All expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board."

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

~~5092~~5602. REASONABLE FEES.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

~~5093~~5603. CLAIM PROCEDURE.

(a) Claim Form. The claim ~~shall~~must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form ~~shall~~must be filed within one year of the date the decision of the Board becomes final. ~~At the discretion of the Chief of Board Proceedings, in his or her discretion, may grant extensions of time for the filing of to file a completed claim form may be granted upon a showing of good reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form.~~ If the claim form filed is incomplete, the claimant ~~shall~~will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings ~~shall~~must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and, when applicable, Franchise Tax Board staff, ~~shall~~must submit a statement in response to the claim. ~~At the discretion of the Chief of Board Proceedings, in his or her discretion, may grant extensions of time for the filing of to file a staff statement may be granted upon a showing of good reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.~~

(e) Claimant Response. The staff statement(s) ~~shall~~must be mailed to the claimant, who ~~shall~~must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. ~~At the discretion of the Chief of Board Proceedings, in his or her discretion, may grant extensions of time for the filing of to file a response may be granted upon a showing of good reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.~~

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

~~5094~~5604. ORAL HEARING ON REIMBURSEMENT CLAIM.

After the submission of documents ~~as set forth described in Regulation 5093~~section 5603, the claim ~~shall~~will be scheduled for oral hearing before the Board. The claimant and, when applicable, the Franchise Tax Board ~~shall~~will receive 60 days notice of the hearing date and time, and the procedures ~~shall~~will be governed by ~~Article 7 chapter 5 of this division~~. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

50955605. NOTICE OF DECISION.

Whether or not an oral hearing is held on the claim, the Board ~~shall~~will send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding ~~the provisions of Article 7~~chapter 5 of this division, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement ~~shall~~must be available as a public record for at least 10 days prior to the effective date of the award, except appeals from actions of the Franchise Tax Board, which ~~shall~~must be available as a public record for at least 10 days prior to the effective date of the determination.

Note: Authority: Section 15606(a), Government Code; ~~Section 42882, Public Resources Code~~; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

52005700. ANNOTATIONS.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Annotations" are published in either the Business Taxes Law Guide or the Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.

(2) "Legal ruling of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff.

(3) "Current Legal Digest" means a publication containing drafts of new annotations proposed to be added, and/or annotations proposed to be amended or deleted in the Business Taxes Law Guide or Property Taxes Law Guide.

(4) "Tax" means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board or any tax over which the Board has oversight or advisory responsibility.

(5) "Taxpayer" means person liable for the payment of any tax as the term tax is defined above.

(6) "Board" means the State Board of Equalization.

(b) Elements of Annotated Legal Rulings of Counsel. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

(1) A summary of pertinent facts,

(2) An analysis of the issue(s),

(3) References to any applicable statutes, regulations, or case law, and

(4) A conclusion supported by the analysis of the issue(s).

(c) Use of Annotations.

(1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.

(2) Annotations are a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and Board regulations as applied by the Board staff to specific factual situations in legal ruling of counsel.

(3) Except as provided in Regulation 1705, following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest and penalty.

(d) Publication of Annotations.

(1) Before new annotations are added, or existing annotations are amended or deleted, the Board shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.

(2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to the Board's Legal Division.

(e) Request for Depublication of an Annotation. An annotation published in the Business Taxes Law Guide or the Property Taxes Law Guide believed to be in error and/or appearing to conflict with another annotation may be depublished using the following procedure:

(1) A request for depublication of an annotation shall be directed to the Chief Counsel.

(2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.

(3) If a request for the depublication of an annotation is approved by the Chief Counsel, the Board shall publish the proposed depublication in a Current Legal Digest.

(4) If a request for the depublication of an annotation is denied, the requestor may bring the request before the Board's Business Taxes or Property Taxes Committee for consideration.

(f) Copies of Legal Rulings of Counsel. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information excised, that has been annotated in the Business Taxes Law Guide or Property Taxes Law Guide. Requests may be directed to the Board's Legal Division.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 15606(c) and (e), Government Code; Sections 6596, 7051, 7084, 8262, 9262, 13170, 30458.2, 32462, 40202, 41162, 43513, 45858, 46613, 50156.2 and 55323, Revenue and Taxation Code; ~~and Sales and Use Tax Regulation 1705, Relief from Liability.~~

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